B.   REMARKS

The Examiner is thanked for the performance of a thorough search. By this amendment, Claims 5, 6, 23, 24 and 41 have been canceled. Hence, Claims 1-4, 7-9, 11-22, 25-27, 29-36 and 39 are pending in this application. The amendments to the claims do not add any new matter to this application. All issues raised in the Office Action mailed June 19, 2006 are addressed hereinafter.

REJECTION OF CLAIMS 1-9, 11-27, 29-36, 39 AND 41 UNDER 35 U.S.C. § 102(e)

Claims 1-9, 11-27, 29-36, 39 and 41 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Peterson et al.*, U.S. Patent No. 7,020,628 (hereinafter "*Peterson*"). This rejection is moot with respect to canceled Claims 5, 6, 23, 24 and 41. It is respectfully submitted that remaining Claims 1-4, 7-9, 11-22, 25-27, 29-36 and 39, as amended, are patentable over *Peterson* for at least the reasons provided hereinafter.

CLAIM 1

Claim 1, as amended, is directed to a computer-implemented method for determining an amount to be billed to a customer for the use of computing resources. Claim 1 recites:

> "determining usage data that indicates usage, by the customer during a specified period of time, of a set of one or more computing resources assigned exclusively to the customer, wherein over time, computing resources may be de-allocated from the set of one or more computing resources assigned exclusively to the customer and additional computing resources may be allocated to the set of one or more computing resources assigned exclusively to the customer from a plurality of computing resources; and
> in a computer system determining the amount to be billed to the customer based upon the usage data, value data that specifies a number of service units that each computing resource from the set of one or more computing resources is capable of providing per unit time, and a reservation fee for reserving for the customer other computing resources from the plurality of computing resources that are not included in the set of one or more computing resources assigned exclusively to the customer."

Claim 1 is directed to a computer-implemented method for determining an amount to be billed to a customer for the use of computing resources. In the approach recited in Claim 1, the amount to be billed to a customer is based upon usage data, value data and a reservation fee. The

reservation fee is "for reserving for the customer other computing resources from the plurality of computing resources that are not included in the set of one or more computing resources assigned exclusively to the customer." Thus, the approach includes billing a customer a reservation fee to reserve computing resources that are not currently assigned exclusively to the customer, but that might be in the future. This is useful in situations where a customer may need additional computing resources to handle an upcoming spike in demand, for example because of the launch of a new Website, but does not currently have sufficient resources to handle the demand. The billing of the customer includes the reservation fee for reserving the additional resources.

It is respectfully submitted that determining an amount to be billed to a customer for the use of computing resources by including a reservation fee for computing resources that are not currently exclusively assigned to a customer is not taught or suggested by *Peterson*. *Peterson* describes a method for tracking and billing computer system usage. In the approach of *Peterson*, a customer may be billed for the use of host computer systems, maintenance charges and miscellaneous charges. The miscellaneous charges include security costs or miscellaneous software charges. There is no teaching or suggestion in *Peterson* of billing a customer for the use of computing resources based upon a reservation fee for reserving additional computing resources that are not yet exclusively assigned to the customer. The Office Action refers to the text at Col. 4, lines 47+ for teaching the limitations of Claim 6 relating to the reservation fee that were amended into Claim 1. Applicant has studied this and other portions of *Peterson* and does not find any mention or suggestion of any type of reservation fee being considered in the amount billed to a customer for the use of computing resources. It is therefore respectfully submitted that at least the Claim 1 limitation "determining the amount to be billed to the customer based upon ... and a reservation fee for reserving for the customer other computing resources from the plurality of computing resources that are not included in the set of one or more computing resources assigned exclusively to the customer" is not taught or suggested by *Peterson* and that Claim 1 is therefore patentable over *Peterson*.

CLAIMS 2-4, 7-9 AND 11-18

Claims 2-4, 7-9 and 11-18 all depend from Claim 1 and include all of the limitations of Claim 1. It is therefore respectfully submitted that Claims 2-4, 7-9 and 11-18 are patentable over

Peterson for at least the reasons set forth herein with respect to Claim 1. Furthermore, it is respectfully submitted that Claims 2-4, 7-9 and 11-18 recite additional limitations that independently render them patentable over *Peterson*.

CLAIMS 19-22, 25-27 AND 29-36

Claims 19-22, 25-27 and 29-36 recite limitations similar to Claims 1-4, 7-9 and 11-18, except in the context of computer-readable media. It is therefore respectfully submitted that Clams 19-22, 25-27 and 29-36 are patentable over *Peterson* for at least the reasons set forth herein with respect to Claims 1-4, 7-9 and 11-18.

CLAIM 39

Claim 39 has been amended to recite limitations similar to Claim 1, except in the context of an apparatus. It is therefore respectfully submitted that Clam 39 is patentable over *Peterson* for at least the reasons set forth herein with respect to Claim 1.

In view of the foregoing, it is respectfully submitted that Claims 1-4, 7-9, 11-22, 25-27, 29-36 and 39 are patentable over *Peterson*. Accordingly, reconsideration and withdrawal of the rejection of Claims 1-4, 7-9, 11-22, 25-27, 29-36 and 39 under 35 U.S.C. § 102(e) as being anticipated by *Peterson* is respectfully requested.

CONCLUSION

It is respectfully submitted that all of the pending claims are in condition for allowance and the issuance of a notice of allowance is respectfully requested. If there are any additional charges, please charge them to Deposit Account No. 50-1302.

The Examiner is invited to contact the undersigned by telephone if the Examiner believes that such contact would be helpful in furthering the prosecution of this application.

Respectfully submitted,

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